IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 975 of 1985

Date of Decision: 21.7.2004

BHANUMATIBEN WD/O VIJAYKUMAR ZAVERI

Versus

MAFATLAL JOITARAM PATEL

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellant Mr.Adv.P.V.NANAVATI

For MR.Adv.R.H.MEHTA

PER: HON'BLE THE CHIEF JUSTICE (ORAL):-

This appeal is directed against the award of the Motor Accident Claims Tribunal [Main], Surat in Claim Petition No.630 of 1982 decided on 31.7.1984.

2. The accident took place on 10.6.1982 at 10.30 a.m. when truck No. GRW-462 going from Ahmedabad to Bombay hit car No.MMD-5515 owned and driven by Vijaykumar

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Whether reporters of Local Papers may be allowed to see the Judgment?

[deceased]. As a result of this accident, some died others suffered injuries. Vijaykumar [39] is amongst the deceased. Accordingly Claimants filed Claim Petitions seeking compensation. Similarly, legal heirs of Vijaykumar claimed compensation of Rs.8.50 Lac. Allegation is that accident took place on account of the rash and negligent driving by the truck driver otherwise it could be avoided. The claimant was doing business in jewellery at Bombay earning handsomely. With his death, the family has lost bread earner. Opponents filed written statement. They admit the accident but denied the allegation of rash and negligent driving of truck by its driver. It is stated that truck was being driven at slow speed cautiously and in obedience to traffic rules. Fiat car MMD 5515 came from opposite direction, driven at high speed rashly and negligently in violation of traffic rules, dashed against truck. Therefore, they are not liable to pay compensation. Otherwise, the claim is highly exaggerated. The Motor Accident Claims Tribunal framed issues in respective cases. In this case, the issues were whether the accident was result of rash and negligent driving of truck [GRW-462] and whether deceased was guilty of contributory negligence and whether opponent No.2 is vicariously liable for the act of the driver. What compensation claimant is entitled and liability therefore. Motor Accident Claims Tribunal holds that accident took place between the truck and the car. Vijaykumar was equally more responsible for the accident. Compensation of Rs.2.64 Lac minused by 50 % contributory negligence towards the accident.

3. Through this appeal, claimants raised two questions. First, finding with regard to contributory negligence on the part of the deceased. The Second, enhancement of compensation. Shri P.V.Nanavati submits that finding of the contributory negligence recorded by the Motor Accident Claims Tribunal is erroneous. Evidence does not qualify this conclusion, therefore, it is liable to be set aside. Shri Sunil B. Parikh contends otherwise and submits that finding is based on evidence, therefore, it should be sustained. With a view to decide the question, evidence is perused and analysed carefully. Most important evidence in the case is by Prafulchandra Jivaji Patel; he lodges First Information Report in this case. He states that he was proceeding on his motor cycle at Kadodara Cross Road at about 10.00 A.M. nearby Vav High School when truck No.GRW-462 was

proceeding from Kamrej Cross Road in high speed and dashed against the car MMD-5515, and two persons sitting in front seat expired and two occupants on the back side suffered injuries. The driver and cleaner of the truck ran away. From the statement of this witness, claim is supported. The truck driver was responsible for the accident according to this witness. Claimant Kamlashankar is one of victims of accident. He also states that car was moving on the left side of the road at slow speed. Truck came from opposite side at high speed running in zigzag manner. Seeing the truck moving in this fashion, speed of the car was slowed but the truck dashed against the car which was pushed back. Driver and cleaner of the truck ran away from the place. Car was on left side of the road, while truck was on wrong side of the road. Car was pushed back 50-60 ft. Therefore, evidence on this aspect is straight, satisfactory and acceptable, while statement of the Mafatlal [driver] cannot be accepted since he would like to defend himself and avoid the responsibility. Therefore, he would hold the car responsible for the accident. First Information Report claimants' other evidence straightaway rejects his testimony. His conduct also goes to show that he was at fault, that is why he and his conductor ran away from the spot leaving the car occupants dead and injured. Finding of Motor Accident Claims Tribunal that both the vehicles are responsible for the accident cannot be sustained on this kind of evidence. Further observation that the accident took place in middle of the road is not based on evidence. At the most it is based on assessment, not on physical assessment. The car is pushed back from the scene and truck has gone to the left side, meaning thereby, the car does not remain in the position it was at the time of accident. Similarly, truck goes to the left escaping the responsibility. The truck is carrying heavy load viz. drilling machine. It would like to be on the Pakka portion of the road and avoid going to left, more so, on Kachha portion to avoid tilting. With this conduct, he was in the middle of the road and the accident took place, with such an impact that the car was pushed back 50-60 ft., which could not be, had the truck be driven at normal / slow speed as contended. Therefore, finding of the Motor Accident Claims Tribunal that car was equally responsible for the accident, is not sustainable on correct appraisal of evidence, therefore, set aside.

4. Next question is determination of compensation. Motor Accident Claims Tribunal assesses the income at Rs.20,000/-. It is maintained but correct calculation could be after deducting Rs.4,000/- towards personal

expenditure, remaining amount comes to Rs.16,000/-multiplied by 16, compensation works out to Rs.2.56 Lac + Rs.5,000/-towards expectancy of life + Rs.7,000/-towards funeral expenses + Rs.5,000/-towards mental agony, therefore, total compensation works out to Rs.2.73 Lac. Question is whether claimants should be paid Rs.2.73 Lac or Rs.2.64 Lac claimed. Shri Parikh submits that since claim has been confined to Rs.2.64 Lac, more compensation be not paid. We do not agree with this submission. Claimants are entitled to just compensation which is determined by the Court and not what is claimed. Therefore, the just compensation in this case is Rs.2.73 Lac.

5. Therefore, this appeal is allowed. The Award is modified to the extent that instead of Rs.2.62 Lac, claimants are entitled to Rs.2.73 Lac with interest at the rate of 6 % from the date of application till payment. It is submitted that claimants have already been paid Rs.1.32 Lac with proportionate cost. This amount be deducted while making the payment. Compensation be paid within two months to the claimants including Minors [Raju, Atul, Deepak and Sonal] who have become major by this time as per the Counsel for the party. The claimants are entitled to the release of all the amounts invested in the Fixed Deposit Receipts along with the interest which may have accrued thereon.

Appeal stands allowed to the extent indicated above with no order as to costs.

Record and proceeding to be sent back forthwith.

[Bhawani Singh]
Chief Justice

Date : 21.7.2004 [H.K.Rathod]
Judge

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